



United States
Department of
Agriculture

Forest
Service

Pacific
Southwest
Region

Regional Office, R5
1323 Club Drive
Vallejo, CA 94592
(707) 562-8737 Voice
(707) 562-9240 Text (TDD)

File Code: 1570-1
Appeal No.: 10-05-00-0050-A215
Date: April 20, 2010

Denise Boggs
Executive Director
Conservation Congress
P. O. Box 5
Lewistown, MT 59457

CERTIFIED-RETURN
RECEIPT REQUESTED

Dear Ms. Boggs:

On March 4, 2010, you filed a Notice of Appeal (NOA) on behalf of Conservation Congress, Citizens for Better Forestry, Environmental Protection Information Center, Klamath Forest Alliance and Klamath-Siskiyou Wildlands Center, appealing the Shasta-Trinity National Forest (STNF) Final Supplemental Environmental Impact Statement (FSEIS) and Record of Decision (ROD) for the Pilgrim Vegetation Management Project, signed by Forest Supervisor, J. Sharon Heywood on January 11, 2010. The legal Notice was published on January 20, 2010.

I have reviewed the entire appeal record, including your written Notice of Appeal (NOA), the ROD, FSEIS and supporting documentation. I have weighed the recommendation from the Appeal Reviewing Officer and incorporated it into this decision. A copy of the Appeal Reviewing Officer's recommendation is enclosed. This letter constitutes my decision on the appeal and on the specific relief requested.

FOREST ACTION BEING APPEALED

The original FEIS was completed and the ROD was issued in June 1, 2007, implementing Alternative 1, the Preferred Alternative, as described in the FEIS. The following is a description of the Preferred Alternative as described in the 2007 ROD:

“I have decided to implement Alternative 1 as described in the Final Environmental Impact Statement (FEIS). This alternative will commercially thin approximately 1,200 [acres] of naturally occurring stands to the density of 120 to 150 square feet of basal area, commercially thin and remove insect-infested and diseased trees (sanitize) from about 1,035 acres of naturally occurring forest stands, commercially thin about 785 acres of planted stands and commercially thin about 40 acres of mature pine to reduce ladder fuels and maintain the older trees. This alternative will also remove dead and dying knobcone pine trees from about 10 acres and replant the area with a mix of conifer species. Approximately 415 acres of disease and insect infested stands will be regenerated by harvesting and replanting the stands with mix of coniferous species. This alternative will also reduce woody fuels to decrease potential wildfire behavior by underburning about 200 acres and tractor piling and burning or burning slash concentrations on up to 700



acres. The project will also remove conifers encroaching on oaks scattered individuals and aspens (about 20 acres) and remove encroaching conifers on about 275 acres of historic dry meadow areas. The project will require construction of about 0.3 miles of new road and short lengths of temporary spur road. Approximately 10 miles of existing roads will be closed with guardrail barricades or earth berms. Approximately 2 miles of existing roads will be decommissioned and removed from the forest road system.

This decision approves a non-significant amendment to the Forest Plan (FEIS, pages 123 to 125). On 255 acres of the Pilgrim project this amendment removes the requirement on Forest Plan page 4-61 to “Retain at least 15 percent of the area associated with each cutting unit (stand) and to the extent possible, patches and dispersed retention should include the largest, oldest live trees, decadent or leaning trees and hard snags occurring in the unit.” In making this decision for minor amendment to the Forest Plan, I considered the analysis addressing vegetative diversity that showed late successional stand objectives of the Forest Plan are still being met at the watershed scale (FEIS, pages 49-50).”

The purpose of the supplement to the Pilgrim Vegetation Management Project Final Environmental Impact Statement (FSEIS) and the January 11, 2010 Record of Decision is to address concerns related to monitoring obligations as outlined in the Shasta-Trinity National Forest Land and Resource Management Plan Forest Plan as ordered by the United States District Court for the Eastern District of California Court on May 13, 2008 [Conservation Congress and Klamath Forest Alliance v. United States Forest Service No. Civ. S-07-2764 LKK/KJM]. The Court ruled that the Forest Service did not fully comply with its monitoring obligations for certain management indicators as outlined in the Forest Plan and remanded the matter to the agency for further action consistent with the order.

More specifically, the Court found that the Forest Service did not fully meet its monitoring obligations for two of the three selected species - mule deer and red-breasted nuthatch. The Court found that for those species the information presented in the FEIS did not show a high correlation between habitat and the species population resulting in the need for additional analysis.

APPEAL REVIEWING OFFICER'S FINDINGS and RECOMMENDATION

The ARO, Tina Terrell, found that the project is an appropriate and reasonable response to direction in the Shasta-Trinity National Forest Land and Resource Management Plan.

ARO, Tina Terrell recommended affirming the Forest Supervisor’s decision because she determined the project did adequately address Management Indicator Assemblages.

DECISION

I agree with the ARO’s analysis as presented in the recommendation letter. The issues raised are similar to the comments made by the Appellants during the comment period. All appeal issues raised have been considered. I affirm the Forest Supervisor’s decision to implement Alternative 1 in the 2010 ROD.

Implementation of the project decision may occur on, but not before, the fifteenth business day following the date of this appeal disposition. In any event, implementation may only occur upon a ruling from the United States District Court for the Eastern District of California which lifts the injunction on project implementation previously imposed on May 13, 2008. My decision constitutes the final administrative determination of the Department of Agriculture [36 CFR 215.18(c)].

Sincerely,

/s/ Robert G. MacWhorter
ROBERT G. MACWHORTER
Appeal Deciding Officer Deputy
Regional Forester

Enclosure



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1323 Club Drive
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File Code: 1570-1

Date: April 14, 2010

Subject: Pilgrim Vegetation Management Project
Appeal No. 10-05-00-0050-A215
Shasta-Trinity National Forest

To: Appeal Deciding Officer

I am the designated Appeal Reviewing Officer for this appeal. This is my recommendation on disposition of the appeal filed by Denise Boggs, on behalf of Conservation Congress, for Citizens for Better Forestry, Klamath-Siskiyou Wildlands Center and Klamath Forest Alliance, appealing the Shasta-Trinity National Forest Supervisor, J. Sharon Heywood, Record of Decision (ROD) for the Pilgrim Vegetation Management Project, Final Supplemental Environmental Impact Statement (FSEIS). The decision was signed on January 11, 2010, and the legal notice of the decision was published on January 20, 2010.

DECISION BEING APPEALED

Over the last decade the Forest Service has been monitoring the incidence of black stain and annosus root disease on the McCloud Flats through establishment of plots and field and aerial surveys. In the last three years the incidence of Western Pine Beetle has also been observed and tracked resulting in a number of salvage sales to reduce long-term ground fuel accumulations and increased fire hazard. The Pilgrim project area has been a known root disease activity zone for several decades and the spread of the disease has become more prevalent in recent years. As a result of this monitoring the Shasta-Trinity National Forest proposed vegetation management on approximately 3,800 acres within an 8,500-acre assessment area with the Pilgrim Vegetation Management Project. Project activities were designed to address declining forest health in areas of root disease and overstocking; loss of aspen, oaks and dry meadows; and increased fuel loading.

The original FEIS was completed and the ROD was issued in June 1, 2007, implementing Alternative 1, the Preferred Alternative, as described in the FEIS. The following is a description of the Preferred Alternative as described in the ROD:

“I have decided to implement Alternative 1 as described in the Final Environmental Impact Statement (FEIS). This alternative will commercially thin approximately 1,200 [acres] of naturally occurring stands to the density of 120 to 150 square feet of basal area, commercially thin and remove insect-infested and diseased trees (sanitize) from about 1,035 acres of naturally occurring forest stands, commercially thin about 785 acres of planted stands and commercially thin about 40 acres of mature pine to reduce ladder fuels and maintain the older trees. This alternative will also remove dead and dying knobcone pine trees from about 10 acres and replant the area with a mix of conifer species. Approximately 415 acres of disease and insect infested stands will be regenerated by



harvesting and replanting the stands with mix of coniferous species. This alternative will also reduce woody fuels to decrease potential wildfire behavior by underburning about 200 acres and tractor piling and burning or burning slash concentrations on up to 700 acres. The project will also remove conifers encroaching on oaks scattered individuals and aspens (about 20 acres) and remove encroaching conifers on about 275 acres of historic dry meadow areas. The project will require construction of about 0.3 miles of new road and short lengths of temporary spur road. Approximately 10 miles of existing roads will be closed with guardrail barricades or earth berms. Approximately 2 miles of existing roads will be decommissioned and removed from the forest road system.

This decision approves a non-significant amendment to the Forest Plan (FEIS, pages 123 to 125). On 255 acres of the Pilgrim project this amendment removes the requirement on Forest Plan page 4-61 to “Retain at least 15 percent of the area associated with each cutting unit (stand) and to the extent possible, patches and dispersed retention should include the largest, oldest live trees, decadent or leaning trees and hard snags occurring in the unit.” In making this decision for minor amendment to the Forest Plan, I considered the analysis addressing vegetative diversity that showed late successional stand objectives of the Forest Plan are still being met at the watershed scale (FEIS, pages 49-50).”

The purpose of the supplement to the Pilgrim Vegetation Management Project Final Environmental Impact Statement (FEIS) is to address concerns related to monitoring obligations as outlined in the Shasta-Trinity National Forest Land and Resource Management Plan Forest Plan as ordered by the United States District Court for the Eastern District of California Court on May 13, 2008 [Conservation Congress and Klamath Forest Alliance v. United States Forest Service No. Civ. S-07-2764 LKK/KJM]. The Court ruled that the Forest Service did not fully comply with its monitoring obligations for certain management indicators as outlined in the Forest Plan and remanded the matter to the agency for further action consistent with the order. More specifically the Court found that the Forest Service did not fully meet its monitoring obligations for two of the three selected species - mule deer and red-breasted nuthatch. The Court found that for those species the information presented in the FEIS did not show a high correlation between habitat and the species population resulting in the need for additional analysis.

APPEAL SUMMARY

The Pilgrim Project was listed in the Schedule of Proposed Actions beginning in January 2004. The public has been involved on numerous occasions and through a variety of methods over the long history of environmental analysis for the Pilgrim Vegetation Management Project. A history of public involvement is detailed in Chapter 1 of the Pilgrim Vegetation Management Project FEIS - June 2007, (Chapter 1, pp. 14-16).

A Notice of Intent to prepare a supplemental environmental impact statement was published in the Federal Register on August 8, 2008 (Federal Register/Vol. 73 No. 154/Friday August 8, 2008/Notices, pp. 46236-46238). A copy of the Notice of Intent was sent to individuals, groups, and agencies that received the original FEIS. A legal notice was placed in the Mt. Shasta Herald on August 6, 2008 and Redding Record Searchlight August 7, 2008, stating that the Shasta-

Trinity National Forest will prepare a supplemental environmental impact statement (SEIS) for the Pilgrim Vegetation Management Project to present additional information consistent with the court ruling in *Conservation Congress v. Forest Service*, Case No. 07-02764 (E.D. Cal. May 13, 2008). This supplement also modified the Project Level Management Indicator Assemblage Report for the Pilgrim Vegetation Management Project dated February 15, 2007.

A DSEIS was published for review and comment on March 20, 2009. The notice of availability was published in the Federal Register on March 20, 2009. The DSEIS was made available on the Forest's web site. A copy of the notice of availability was sent to individuals, groups, and agencies that received the original FEIS. A legal notice was placed in the Redding Record Searchlight on March 22, 2009 and in the Mt. Shasta Herald on April 1, 2009. The appellants made timely comments and are eligible to file an appeal.

The legal notice of decision was published January 20, 2010; the deadline for filing appeals was March 8, 2010. The current appeal was post marked on March 4, 2010 and is timely.

Appellants declined to meet for informal resolution.

The appellants requested a full reversal of the ROD.

ISSUES AND RESPONSES

Issue 1: The Forest continued to use Mule deer as an MIS for the Pilgrim project after the court ruled it was an inappropriate MIS for the project. (Appeal, pp. 7-8)

Response: The FSEIS supplements the original analysis with the most currently available mule deer population monitoring data applicable to the Shasta-Trinity National Forest and the Pilgrim project area to assess to a greater degree of certainty population trends for this species (FSEIS, pp. 10-23). The FSEIS also provides the results of a more detailed study of the relationship of mule deer habitat to its population trend (FSEIS, Appendix L, pp. L-25 to L-32).

By supplementing this analysis, the Forest provides further rationale that habitat-based analysis is appropriate for the mule deer. The supplemental analysis also clarifies the issue of whether or not documented mule deer declines throughout the State and in the Pilgrim project area are attributable to habitat declines or predator pressure. The strong link between habitat declines and mule deer population declines is further supported. The FSEIS includes both habitat analysis and an analysis of population data for the mule deer (FSEIS, pp. L-26 to L-32) and notes the relationship between the loss of habitat at the larger scale and declining population trends.

Although the proposed project is likely to improve conditions for the mule deer, the small scale of the operation relative to the range and extent of the species is unlikely to cause a measurable shift in either habitat or population trends. As the FSEIS states, the best available evidence indicates that mule deer decline is directly related to declines in open and early seral habitat. The conclusion of the analysis was that project-level habitat impacts will not meaningfully alter or contribute to existing forest-wide population trends of the mule deer (ROD, pp. 3-4).

I find that the Forest Supervisor adequately displayed the relationship between habitat and mule deer populations to justify analyzing mule deer as an example of species associated with the open and early seral habitat management indicator assemblage for the project.

Issue 2: The Forest again improperly named and analyzed Red-breasted Nuthatch as an MIS for the project. (Appeal, pp. 8-9)

Response: The analysis in the FSEIS and revised project level management indicator report provides additional analysis and reference material that more strongly supports similar trends in the habitat and population trends of the red-breasted nuthatch. The FSEIS at pages 23 through 35 and then again from pages 35 through 45 provides analysis of late seral and snag and downed log assemblages with the red-breasted nuthatch provided as an example species for each assemblage. These pages add additional population information on the red-breasted nuthatch including additional relevant life-history information, more discussion of the quality and quantity of habitat available for the species, and additional discussion regarding the relationship between the assemblage habitat and population trends of the species.

Additional information on population trends was added from several sources including authoritative sources such as the Cornell Lab of Ornithology. Moreover, although not required, actual species surveys were conducted in the project area to further assess the project's impacts on populations. In 2008 and 2009, Forest wildlife biologists and volunteers conducted additional breeding bird surveys throughout the Pilgrim area. In 2008, the nearest survey recorded 19 individual red-breasted nuthatches and in 2009 the same survey recorded 22 individuals. In 2008, the red-breasted nuthatch was the eighth most common species along this route. The original narrative in the FEIS is still relevant to the analysis and the additional material presented in the FSEIS indicates a stronger connection between habitat and population trends. The conclusion of the analysis was that project level habitat impacts will not alter or contribute to existing Forest-wide habitat or population trends for the red-breasted nuthatch.

The FSEIS has demonstrated that despite the complexity of its population changes since 1966, the species has shown a steady population increase since the late 1990s paralleling the similar increases in the late-seral and snag and down log assemblages on the Forest. Although an analysis of habitat components and their expected changes complies fully with the Forest Plan, additional population data supplied by the field surveys combined with the more extensive Breeding Bird Survey data enables the Forest Service to monitor closely the population trends not only of those species selected as examples, but of many others as well (ROD, pg. 3).

Given the additional clarification, I find that the Forest Supervisor has demonstrated that habitat-based analyses is appropriate and the red-breasted nuthatch was properly selected and analyzed as an example of the late-seral and the snag and down log management indicator assemblages.

Issue 3: The Shasta-Trinity National Forest violated its LRMP and the National Forest Management Act by failing to monitor populations of wildlife Management Indicator Species (MIS) and to utilize the MIS concept. (Appeal, pp. 9-12)

Response: The appellant claims the Forest Service has violated its Land and Resource Management Plan (LRMP or Forest Plan) because it has failed to monitor populations of wildlife Management Indicator Species and has failed to utilize the MIS concept as intended under the 1982 planning regulations. However, the 1982 regulations have been repealed, and under the 2000 planning regulations' transition provisions, which are currently in effect, a forest is only required to utilize the best available science in implementing its governing plan. It is not required to separately comply with any substantive provisions of the 1982 regulations not explicitly incorporated into the plan. The STNF LRMP did not adopt the MIS concept, but instead identified management indicator assemblages, for which habitat analysis is sufficient under the Plan. Population monitoring of examples of wildlife species associated with each assemblage is provided as an optional alternative to habitat analysis, but is not required, under the Forest Plan. The STNF's approach has recently been upheld by the Ninth Circuit Court of Appeals. In the March 16, 2010 unpublished Ninth Circuit decision in *Conservation Congress, et al. v. United States Forest Service* (No. 09-16182), the Court squarely rejected the same arguments raised by the same appellant here in interpreting the Shasta-Trinity LRMP. The Ninth Circuit held that appellant's argument in that case

fails because the LRMP does not identify any management indicator species. Although the LRMP "recommends for monitoring" twenty-two species "that are highly associated with the habitats and habitat components on the Shasta-Trinity National Forests," the LRMP does not label these species as "management indicator species." Instead, the LRMP identifies nine "wildlife assemblages" of "management indicators," which the Forest Service refers to as "management indicator assemblages." The LRMP allows the Forest Service to use "habitat components to represent the assemblages." NFMA does not require the Forest Service to verify its prediction regarding the effect of the East Fork II Project on the management indicator assemblages with "observation or on-the-ground analysis".

The STNF's approach here, which relied on an analysis of habitat components of management indicator assemblages to determine impacts of the Pilgrim Project, and further supplemented its analysis with optional additional analysis and population monitoring information with respect to example wildlife species for each affected assemblage, clearly complies with the LRMP and has been upheld by the Ninth Circuit.

The purpose of the supplement to the Pilgrim Vegetation Management Project Final Environmental Impact Statement FEIS is to address concerns related to monitoring obligations as outlined in the Shasta-Trinity National Forest Land and Resource Management Plan which were identified by the United States District Court for the Eastern District of California Court on May 13, 2008 [*Conservation Congress and Klamath Forest Alliance v. United States Forest Service*, No. Civ. S-07-2764 LKK/KJM]. The Court ruled that the Forest Service did not fully comply with its monitoring obligations for certain management indicators as outlined in the Forest Plan and remanded the matter to the agency for further action consistent with the order. More

specifically, the Court found that the Forest Service did not fully meet its monitoring obligations for two of the three selected species - mule deer and red-breasted nuthatch. The Court found that for those species the data presented in the FEIS did not show a high correlation between habitat and the species population resulting in the need for additional analysis. The Court did accept the habitat analysis for the white-breasted nuthatch (ROD, pg. 1).

While the LRMP does not require any population monitoring or analysis of individual species, the Forest nonetheless provided additional population monitoring information of selected species, including, where available, site specific population survey data, in response to the Court's Order. Specifically, additional analysis and supplemental information were developed to provide additional population monitoring information for the mule deer and red-breasted nuthatch. An extensive literature search was also conducted to obtain the most current information regarding the biology and status of mule deer and red-breasted nuthatch on the Forest and throughout their range. This supplemental analysis is documented in the Pilgrim Vegetation Management Project Final Supplemental Environmental Impact Statement (pp. 16-23; 30-35; and 41-45) and the Pilgrim Vegetation Management Project Level Management Indicator Assemblages Report as revised February 18, 2009, (pp. L-1 through L-11; L-26 through L-32; L-47 through L-61).

I find that the Forest Supervisor complied with the LRMP and with the National Forest Management Act in regards to wildlife management indicator assemblage requirements.

Issue 4: The STNF fails to follow its Forest Plan with regard to MIS. (Appeal, pp. 12-14)

Response: The appellants contend that this project did not follow guidance in the Northwest Forest Plan, the Shasta-Trinity Forest Plan FEIS, and the Shasta-Trinity LRMP regarding MIS management. To support their claim, appellants have provided numerous references to the Shasta-Trinity National Forest Land and Resource Management Plan FEIS and appendices only. The LRMP FEIS contains the environmental analysis that was conducted in preparing the LRMP, but does not represent the actual direction that was included in the final Shasta-Trinity National Forest LRMP. The appellants provide no support for their position that the Northwest Forest Plan imposed direction on the STNF specifically related to MIS.

Forest or bioregional scale monitoring requirements applicable to the Shasta-Trinity National Forests wildlife management indicator assemblages are found in the Monitoring Action Plan of the LRMP (pp. 5-15 through 5-18). The LRMP allows the Forest to use appropriate indicator species or habitat components to represent the assemblage. The Project Level Management Indicator Assemblage Report as revised for the Pilgrim Vegetation Management Project FSEIS can be found in Appendix L. The purpose of this project-level report is to evaluate and disclose the impacts of the Pilgrim Vegetation Management Project on the habitat components of the wildlife management indicator assemblages as identified in the Forest Plan. This report documents the effects of project alternatives on the habitat of selected assemblages and/or their representatives.

Please refer back to Issue 3 for a more in depth response to this issue.

I find that the Forest Supervisor has followed the LRMP with regards to management indicator assemblages.

Issue 5: The STNF has failed to demonstrate the species selected for the Pilgrim project used the Best Available Science (BAS) standard contained in the 2000 NFMA regulations. (Appeal, pp. 14-15)

Response: In response to the Court's order, additional analysis and supplemental information were developed to provide additional population monitoring information for the mule deer and red-breasted nuthatch. An extensive literature search was also conducted to obtain the most current information regarding the biology and status of mule deer and red-breasted nuthatch on the Forest and throughout their range. This supplemental analysis is documented in the Pilgrim Vegetation Management Project Final Supplemental Environmental Impact Statement (pp. 16-23; 30-35; and 41-45) and the Pilgrim Vegetation Management Project Level Management Indicator Assemblages Report as revised February 18, 2009 (pp. L-1 through L-11; L-26 through L-32; L-47 through L-61). The Forest Supervisor confirmed in the Record of Decision (pg. 7) that "My decision is consistent with relevant law, regulations and agency policy. My conclusion is based on a review of the record that shows a thorough consideration of the proposal using best available science."

Also see Responses to Issues #1 and #2 for a more in depth response to this issue.

I find that the Forest Supervisor used the Best Available Science and information, including the most currently available population data on the mule deer and the red-breasted nuthatch, for analysis in the Pilgrim project FSEIS.

Issue 6: The Shasta-Trinity National Forest violated the Administrative Procedures Act (APA). (Appeal, pg. 16)

Response: For administrative level reviews of agency decisions under administrative appeal, findings of whether agency decisions are consistent with other laws relevant to appeal issues constitute findings that those decisions are not (or are) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, and thus are (or are not) consistent with the Administrative Procedures Act (APA).

The Pilgrim Project's Final Supplemental Environmental Impact Statement describes Land and Resource Management Plan direction (FSEIS, pg. 5). Chapter 3 of the FSEIS presents the scientific and analytical basis for the comparison of alternatives. These analyses show the consistency with laws relevant to the appeal issues.

The Pilgrim Project's Record of Decision (pg. 7) states that Alternative 1 complies with the following laws and regulations: the National Environmental Policy Act, the National Forest Management Act, the Endangered Species Act, the Clean Water Act, Clean Air Act, the National Historic Preservation Act, and Environmental Justice - Executive Order 12898, Road Analysis as directed by the National Forest System Road Management Rule published in the Federal Register on January 12, 2001, and Interim Directive 7710-2001-3 published

December 20, 2001, Survey & Manage January 9, 2006, court order regarding the protection of species under current Survey and Manage standards and guidelines.

I find that the Forest Supervisor's decision is consistent with all relevant laws and regulations and therefore is consistent with the APA.

FINDINGS

Clarity of the Decision and Rationale -- The Forest Supervisor's decision and supporting rationale are clearly presented in the Record of Decision. Her reasons for selecting Alternative 1 are logical and responsive and consistent with direction contained in the Shasta-Trinity National Forest LRMP.

Comprehension of the Benefits and Purpose of the Proposal -- The purpose of the proposal as stated above is clear and the benefits are displayed.

Effectiveness of Public Participation Activities and Use of Comments -- Public participation was adequate and well documented. A Notice of Intent and Notice of Availability of the DSEIS were published in the Federal Register. The project was included in the Forest's quarterly Schedule of Proposed Actions. The Forest distributed draft and final SEISs to interested groups and individuals. Responses to the comments received on the DSEIS are detailed and included as part of the FSEIS (Appendix N, pp. N-1 through N-31).

RECOMMENDATION

My review was conducted pursuant to and in accordance with 36 CFR 215.19 to ensure the analysis and decision is in compliance with applicable laws, regulations, policy, and orders. I reviewed the appeal record, including the comments received during the comment period and how the Forest Supervisor used this information, the appellants' objections and recommended changes.

Based on my review of the record, I recommend the Forest Supervisor's decision to implement Alternative 1 be affirmed. I recommend that the Appellants' requested relief be denied on all issues.

/s/ Tina Terrell

TINA TERRELL
Appeal Reviewing Officer
Forest Supervisor, Sequoia National Forest